



Federal Communications Commission
Washington, D.C. 20554

DA 13-107
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Saga Broadcasting, LLC
c/o Gary S. Smithwick, Esq.
Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, NW
Suite 301
Washington, DC 20016

H3 Communications, LLC
c/o David Tillotson, Esq.
Law Office of David Tillotson
4606 Charleston Terrace, NW
Washington, DC 20007

Re: Application for Consent to Assignment
WXVT(TV), Greenville, MS
File No. BALCDT – 20120501ACQ
Facility ID No. 25236

Dear Counsel:

The Video Division, Media Bureau, pursuant to delegated authority, has before it for consideration the application to assign the license of station WXVT(TV) from Saga Broadcasting, LLC (Saga) to H3 Communications, LLC (H3) (collectively, Applicants). Raymond Hamilton submitted a one-page e-mail objection on July 6, 2012, that was not served on either Applicant. The Applicants submitted a joint opposition on July 20, 2012. The staff issued a letter seeking further information on September 12, 2012.¹ H3 submitted its response to the letter on October 5, 2012 and a supplemental response on October 17, 2012. Although procedurally defective, we will treat the e-mail as an informal objection, deny it, and grant the above-captioned application.

Background. The application lists the three officers and shareholders of H3 as Christopher Harker, President and Treasurer; Jamie Harker, Vice President; and Timothy Harker, Vice President and Secretary (collectively, the H3 principals), each of whom will have 33.3 percent voting and equity interest. The application further states that the H3 principals are the adult independent children, ages 29, 26 and 24, of Charles Harker, who is the sole stockholder of Commonwealth Broadcasting Group, Inc. (CBG), which is the licensee of Station WABG-TV, Greenville, Mississippi. Further, according to the application, of the purchase price of \$3 million, Charles Harker has agreed to personally guarantee a loan in the amount of \$2.65 million to Assignee to purchase Station WXVT, which guaranty is not collateralized. Charles Harker, who is a certified public accountant and who has extensive experience in buying and selling television stations, assisted and advised his children in negotiating the purchase agreement for WXVT. The application originally stated that CBG and the Assignee intended to enter into an agreement and/or agreements whereby CBG would provide certain services to WXVT. On December 21, 2012, the Applicants amended the application, submitting a proposed shared services agreement whereby CBG would provide certain traffic, billing, marketing and related back-office services to WXVT.

¹ Letter from Chief, Video Division to Counsel for H3 Communications, LLC (Sep. 12, 2012) (*Staff Letter*).

Raymond Hamilton states that “The Principal owner of H3 is a family member of the gentleman whose company owns the ABC affiliate WABG Television, NBC affiliate WNBD, and Fox here in Greenville Mississippi.”² Hamilton states that H3’s acquisition of WXVT would mean that one company under two different names will have a monopoly on the television market in the Mississippi Delta, and he asks that the Commission look into this matter thoroughly before allowing the sale to be completed. Saga and H3 argue that the informal objection simply recites facts that were fully disclosed in the Application; the Application is consistent with well-established Commission policy and precedent regarding shared services arrangements between entities whose principals are related; and there are no factual allegations *prima facie* inconsistent with the public interest.³

Discussion. The Commission applies a two-step analysis to a petition to deny under the public interest standard. First, it must determine whether the petition contains specific allegations of fact sufficient to show that granting the application would be *prima facie* inconsistent with the public interest.⁴ These specific allegations must be supported by the affidavit of a person with knowledge of the facts alleged, except for those of which we may take official notice.⁵ If the specific allegations make a *prima facie* case, we next examine and weigh the evidence presented, to determine “whether the totality of the evidence raises a substantial and material question of fact justifying further inquiry.”⁶

Raymond Hamilton fails to meet this statutory burden. Hamilton provides no factual support for his allegation that “one company under two different names will have a monopoly on the television market here in the Mississippi Delta.” We also find that the Applicants’ have satisfactorily demonstrated the independence of the Harker children from their father, and we therefore grant the Application.

Under the Commission’s longstanding precedent for attributing ownership by family members, the Commission examines the facts and circumstances presented to determine whether a family member’s media interests will be independent and not subject to common influence or control.⁷ As the Commission has stated previously, where family members are involved, “a petitioner attempting to raise a real-party-in-interest issue has a heavy burden, because even independent family relationships may have financial or business ties which would be persuasive indicia of common ownership or real-party status in non-family situations.”⁸ Our inquiry is necessarily fact-based and focused on indicia of influence and control.⁹ In

² E-mail from Raymond Hamilton to David Brown – Federal Communications Commission (dated July 6, 2012) (identifying the subject of the e-mail as being the sale of WXVT).

³ Joint Opposition at 1-2 (citing 47 U.S.C. § 309).

⁴ 47 U.S.C. §309(d)(1); *Astroline Communications Co. Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988).

⁵ 47 U.S.C. §309(d)(1); 47 C.F.R. 73.5006(b).

⁶ *Citizens for Jazz on WRVR v. FCC*, 775 F.2d 392, 395 (D.C. Cir. 1985).

⁷ See, e.g., *Applications of Sevier Valley Broadcasting, Inc. (Assignor) and Mid-Utah Radio, Inc.*, 10 FCC Rcd 1995, 1997 (1995). The Commission considers the following seven factors relevant in making case-by-case determinations regarding family attribution: (1) representations about the independence of family members’ media interests; (2) commingling of media business interests; (3) family members’ participation in the financial affairs, programming and personnel decisions of each other’s media interests; (4) prior broadcast experience of the individuals seeking to establish independent interests; (5) financial independence; (6) sharing of personnel, equipment, contractors or programming information; and (7) involvement by family members in the acquisition or application process. *Clarification of Commission Policies Regarding Spousal Attribution*, MM Docket No. 91-122, Policy Statement, 7 FCC Rcd 1920, 1922-23, para. 16 (1992).

⁸ E.g., *Post Company v. Meridian*, 20 FCC Rcd 12428, 12431 (2005); *Kern Broadcasting Corp. v. Lagniappe Broadcasting, Inc.*, 10 FCC Rcd 6584, 6585-86 (1995) (recognizing that the Commission has previously noted that where family members are involved, a petitioner attempting to raise a real-party-in-interest issue has a heavy

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our analysis of whether a family member's media interests should be attributed, the Commission has traditionally attached a great deal of importance to statements and declarations that show that such media interests are independently held and not subject to common influence and control.¹⁰ Here we find persuasive unchallenged declarations from each of the Harker principals that they are not officers, directors, or shareholders of CBG or any other company with which their father has an ownership or other relationship, and Charles Harker submits a declaration submitting to a reciprocal lack of business relationship with his children.¹¹ Further, the Harkers attest that Charles Harker does not share a common interest in any broadcast licensee in any market. Finally, the Applicants have, under penalty of perjury, stated in a further amendment to the application that they will hire the station's general manager, who will direct day-to-day operations subject to their review; that they will participate in weekly management meetings with sales, news, and operations managers via Skype or teleconference; that they will visit the site on no less than a quarterly basis; and that they will personally represent the station at conventions and similar industry gatherings.

We also find that the draft contracts for ongoing services to be supplied by CBG to H3 qualify as sufficiently arm's-length as not to be inconsistent with independence. The draft JSA submitted in response to the September 12, 2012, staff letter indicates that CBG will collect revenues on H3's behalf, and pay 70% of those revenues to H3, and the SSA and JSA both indicate H3 will maintain full authority and control over the operation of the station, including programming.¹² The revised SSA makes clear that H3's programming will be independently created and produced from CBG.

We have examined the amended Application and find that the applicants are fully qualified and that grant of the assignment application is in the public interest, convenience and necessity. Accordingly, IT IS ORDERED, that the Objection filed by Raymond Hamilton IS DENIED. IT IS FURTHER ORDERED, that the application to assign the license of WXVT(TV), Greenville, Mississippi, from Saga Broadcasting, LLC to H3 Communications LLC, File No. BALCDT - 20120501ACQ IS GRANTED.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc: Raymond Hamilton (via e-mail)

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burden, because even independent family relationships may have financial or business ties which would be persuasive indicia of common ownership or real-party status in non-family situations).

⁹ *Id.*

¹⁰ See, e.g., *Meridian* at 12432-33; *Music Broadcasting, Inc.*, 16 FCC Rcd 5678 (2001); *Sevier Valley Broadcasting, Inc.*, 10 FCC Rcd 9795 (1995).

¹¹ *Staff Letter*, Att. 4.

¹² See *Sagamore Hill of Corpus Christi Licenses, LLC*, Memorandum Opinion and Order, 24 FCC Rcd 2809, 2810 (MB 2010); *Nexstar Broadcasting, Inc.*, Letter, 23 FCC Rcd 3528, 3534 (MB Vid Div. 2008).